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October 16, 2013

**VIA ELECTRONIC FILING**

Hon. Freda Wolfson, U.S.D.J.  
Clarkson S. Fisher Federal Building & U.S. Courthouse  
402 East State Street  
Trenton, NJ 08608

Re: Tara King, Ed.D. et al. v. Christopher J. Christie, et al.  
Civil Action No. 13-cv-5038-FLW-LHG

Dear Judge Wolfson:

Defendant-Intervenor Garden State Equality (“GSE”) respectfully submits this letter in response to the purported motion filed by Plaintiffs on Friday evening, October 11, 2013, regarding evidentiary matters and seeking to have certain allegations deemed admitted (the “Motion”). (Dkt. 50.) Yesterday, the State Defendants submitted a letter to the Court in response to Plaintiffs’ motion. (Dkt. 51.) GSE agrees with the State Defendants that the purported motion is procedurally improper, and therefore fully joins in and adopts as its own the State Defendants’ arguments (Dkt. 51). GSE writes separately to emphasize a few points not addressed by the State Defendants’ letter.

*First*, Plaintiffs’ premise—that the Court dispensed with all motions concerning the evidence before the Court in its Minute Order Entry (Dkt. 46)—is factually inaccurate. The only motion the Minute Order terminated was Docket 44, which was Plaintiffs’ Motion for Leave to File Surreply/Reply in Support of Converted Motion for Summary Judgment,” which the Court dismissed as moot. As such, there is no basis for reconsideration of motions that have not been adjudicated.

*Second*, while Plaintiffs argue that certain facts should be deemed admitted because the State failed to file an Answer, that cannot be a basis to deem those facts admitted because GSE submitted a Proposed Answer and Affirmative Defenses (the “Answer”) on September 6, 2013 along with its intervention papers. (Dkt. 19-3.)<sup>1</sup> GSE’s Answer denied the vast majority of

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<sup>1</sup> Now that GSE’s motion to intervene has been granted, and out of an abundance of caution, GSE today is electronically resubmitting its Answer as a separate document.



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Plaintiffs' factual allegations, and thus there is no basis to conclude that any allegations in Plaintiffs' Complaint should be deemed admitted.

*Finally*, Plaintiffs' argument that the allegations in Plaintiffs' untimely Statement of Material Facts (the "Statement") should be deemed admitted because Defendants did not respond to it also fails. In fact, in GSE's reply in support of GSE's summary judgment motion GSE objected to the Statement on the grounds that Plaintiffs' purportedly undisputed facts are not material to the extent that they go beyond A3371's enactment, text, and legislative history and that it excerpted only portions of the American Psychological Association Task Force Report which should be read in context. (*See* Dkt. 43 at 8 n. 5.)

For all these reasons, and for those set forth in the State Defendants' letter of October 15, 2013, GSE respectfully requests that the Court reject Plaintiffs' Motion. However, if the Court accepts the motion, GSE respectfully requests an opportunity to file a substantive opposition to the motion (including a formal opposition to the Statement if the Court wishes). before the Court rules on the merits of Plaintiffs' Motion.

Very truly yours,  
GluckWalrath LLP

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